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No. 10-914

In the Supreme Court of the United States

MOHAMED POONJA, TRUSTEE,
Petitioner,

v.

JACK TRAMIEL,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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INTRODUCTION

Petitioner filed his petition for a writ of certiorari with this Court on January 12, 2011. United States Supreme Court Rule 15.8 permits a party to call attention to new cases not available at the time of the party's last filing. Petitioner files this supplemental brief to call attention to *Ransom v. FIA Card Services, N.A.*, 131 S.Ct. 716 (2011), decided by this Court on January 11, 2011, and to its significance in this matter. *Ransom* is a new case that was not available when Petitioner filed his petition. It directly conflicts with the Decision on two separate points of law.

ARGUMENT

I. *Ransom* Requires Courts To Employ A Particular Method Of Statutory Construction. The Decision Fails To Employ That Method. Consequently, The Decision Directly Conflicts With *Ransom*.

In *Ransom*, this Court interpreted United States Code, Title 11 ("Code"), § 707(b)(2)(A)(ii)(1).[1] The method that this Court employed to interpret § 707(b)(2)(A)(ii)(1) also applies when interpreting other Code sections. The Decision fails, however, to employ that method when interpreting § 550. The failure leaves *Ransom* and the Decision in direct conflict.

Ransom involved a chapter 13 debtor who was seeking confirmation of his plan of reorganization.

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[1] All further references to "§" will be to sections of the Code.

Confirmation of the reorganization plan depended on whether "vehicle ownership costs" were "*applicable*" to the debtor despite his owning his vehicle free and clear.[2] *Ransom*, 131 S.Ct. at 723-24. The debtor argued that the vehicle ownership costs were applicable to him despite his not having such actual costs. *Id.* at 723, 726. The lower courts rejected his argument, and held that those costs were applicable to only those debtors who had actual vehicle ownership costs.

This Court affirmed the lower courts. It found that the term "*applicable*" had legal significance because its insertion into § 707(b)(2)(A)(ii)(I)[3] affected the section's meaning – *i.e.*, the term's insertion made vehicle ownership costs applicable to *only* those debtors with such actual costs, while its omission would make the costs applicable to *all* vehicle-owning debtors. *Id.* at 724, 727. More particularly, the Court stated:

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[2] § 707(b)(2)(A)(ii)(I) includes "vehicle ownership costs" among a debtor's *applicable* "monthly expenses." Under § 1325, these monthly expenses may be used to calculate a debtor's "disposable income," all of which must be paid through the debtor's plan of reorganization before the plan can be confirmed over objections.

[3] In relevant part, § 707(b)(2)(A)(ii)(I) states:

> The debtor's monthly expenses shall be the debtor's *applicable* monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the [IRS] for the area in which the debtor resides.

(emphasis added).

> If Congress had not wanted to separate in this way debtors who qualify for an allowance from those who do not, it could have omitted the term "*applicable*" altogether. Without that word, all debtors would be eligible to claim a deduction for each category listed in the Standards. Congress presumably included "*applicable*" to achieve a different result. [citation omitted] Interpreting the statute to require a threshold determination of eligibility ensures that the term "*applicable*" carries meaning, as each word in a statute should.
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> ***
>
> [Debtor's] interpretation would render the term "*applicable*" superfluous . . . . The word "*applicable*" is not necessary to [achieve Debtor's interpretation]; it is necessary only for the different purpose of dividing debtors eligible to make use of the tables from those who are not.

Id. at 724, 727 (emphasis added). Due to this Court's recognizing that "*applicable*" has legal significance, it refused to render the term superfluous, and found that § 707(b)(2)(A)(ii)(1) means that vehicle ownership costs are applicable to *only* those debtors with actual vehicle ownership costs. *Id.* at 724-26, 730.

The dissent in *Ransom* agreed with the majority that the fairest reading of § 707(b)(2)(A)(ii)(1) depended on the interpretation of "*applicable*." *Id.* at 731-32 & n.* (Scalia, J. dissenting). It disagreed, however, with the majority's ascribing a definition of legal significance to the term. Instead, it stated that

Congress never intended the term to have legal significance because, according to the dissent, § 707(b)(2)(A)(ii)(1)'s has the same meaning with or without the inclusion of "*applicable*." *Id*. Because it believed that the meaning of § 707(b)(2)(A)(ii)(1) was unchanged by the inclusion of "*applicable*," the dissent rejected the majority's view of the key issue - *i.e.*, whether to render a legally significant term superfluous. Instead, it viewed the issue as whether to interpret an intentionally meaningless term in a manner that recognized and respected Congressional verbosity. *Id*. at 731. Thus, the dissent believed that § 707(b)(2)(A)(ii)(1) made vehicle ownership costs applicable to all vehicle-owning debtors.

Ransom, of course, would have little effect here if the Decision had accepted the contention in Petitioner's petition that § 550(b)-(f)'s defenses are rendered exclusive by the plain meaning of § 550's limiting phrase – "*except as otherwise provided in this section*."[4] Instead, *Ransom* acquires acute relevance to this matter because the Decision did not recognize and apply § 550's plain meaning.

If the plain meaning of the limiting phrase is ignored, *Ransom* would require that the phrase be subjected to the same analysis to which "*applicable*" was subjected. In other words, it would be necessary to determine whether inserting "*except as otherwise provided in this section*" into § 550 affected the

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[4] *See e.g., Crosby v. U.S.*, 506 U.S. 255, 258-59 (1993) (holding that "it could not be more clear" that "*except as otherwise provided in this rule*" is a limiting phrase that renders exclusive those provisions to which it refers in Criminal Rules of Federal Procedure 43).

section's meaning. And if so, both the majority and the dissent in *Ransom* would require the adoption of a meaning for § 550 that treated the limiting phrase as having legal significance.

Inserting "*except as otherwise provided in this section*" into § 550 did, in fact, affect § 550's meaning. It made § 550(b)-(f)'s defenses exclusive, while its omission would have made § 550(b)-(f)'s defenses non-exclusive. Thus, *Ransom* would require courts to respect the limiting phrase's legal significance, and interpret § 550 to mean that § 550(b)-(f)'s defenses are exclusive. The Decision's finding that § 550(b)-(f)'s defenses non-exclusive, therefore, directly conflicts with *Ransom*.

II. *Ransom* Requires Courts To Define A Statutory Term According To Its Ordinary Meaning. The Decision Fails To Define "Value" According To Its Ordinary Meaning. Consequently, The Decision Directly Conflicts With *Ransom*.

The *Ransom* Court found that an undefined Code term should be construed according to its ordinary meaning. *Ransom*, 131 S.Ct. at 724. Thus, it interpreted "*applicable*" in § 707(b)(2)(A)(ii)(1) to mean "appropriate, relevant, suitable, or fit." *Id*.

Unlike Ransom, however, the Decision fails to interpret "value" according to its ordinary meaning. As stated in the petition, the ordinary meaning of "value" outside of the foreclosure context is "fair

market value."[5] But instead of assigning "value" its ordinary meaning, the Decision defines "value" to mean "reasonably equivalent value." "Reasonably equivalent value" is a "neologism"[6] And by definition, a neologism cannot constitute an ordinary meaning. In fact, "reasonably equivalent value" is not an actual value. It is a term used to evoke a judicial inquiry into whether there is a relationship of approximate equivalence between a property's actual value and the value that the transferor received for the property.[7] The Decision, therefore, directly conflicts with Ransom by foregoing the ordinary meaning of "value" in favor of a novel meaning that represents a relationship between two separate values rather than an actual value.

CONCLUSION

Denying certiorari regarding a decision that directly conflicts with this Court's prior holding necessarily sows confusion among the various courts of appeals. Such denial raises questions about whether this Court is considering a retreat from its prior holding, or whether it is calling for a change in how the holding must be applied.

Here, because the Decision directly conflicts with *Ransom*, denying the petition for certiorari will cause the lower courts to become uncertain about how or if to consider the *Ransom* factors when determining

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[5] *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537-39 (1994).

[6] *Id.* at 537.

[7] *Id.* at 537-39 & n.4, 546

whether they are rendering a legally significant term superfluous. Similarly, the courts of appeals will be left to wonder whether this Court will no longer abide by its past definition of "value" in bankruptcy matters or by its past pronouncements that a statutory term should be defined according to its ordinary meaning. For these reasons, the direct conflict between *Ransom* and the Decision requires that this Court grant the petition for certiorari.

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